

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

March 30, 2010

\_\_\_\_\_  
No. 09-40689

Summary Calendar

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RAFAEL LUNA-URBINA,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:08-CR-1315-1  
\_\_\_\_\_

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:\*

Rafael Luna-Urbina pleaded guilty to one count of attempting to reenter the United States after having previously been deported. He was sentenced to 77 months of imprisonment and a two-year term of supervised release. More than 40 days after the entry of judgment, Luna-Urbina filed a notice of appeal. The district court construed the notice of appeal as a request for an out-of-time appeal and denied it pursuant to FED. R. APP. P. 4(b).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Luna-Urbina did not file a notice of appeal within 10 days after the entry of the criminal judgment. *See* FED. R. APP. P. 4(b)(1)(A)(I). His appeal also was noticed beyond the 30-day time limit for extending the appeal period under FED. R. APP. P. 4(b)(4). Thus, the district court did not err in enforcing the time limitations set forth in FED. R. APP. P. 4(b), and this court may not reverse its decision to do so. *See United States v. Leijano-Cruz*, 473 F.3d 571, 574 (5th Cir. 2006). His appeal is dismissed as untimely.

APPEAL DISMISSED.